

§ 1478.6 Eligible costs.

(a) Payments under this part shall be made by CCC and may be made only to the extent that payment is specifically provided for in this part. CCC shall, under this part, to the extent of the availability of funds, reimburse an eligible owner for 65 percent of the eligible costs of re-establishing seedlings, trees, or nursery plants, not in excess of the number of seedlings, trees, or nursery plants constituting the qualifying loss. Such reimbursement may be based on average costs or the actual costs for the replanting, reseeding, or repairing practices, as determined by CCC. Producers with trees, or nursery plants, who are eligible for both disaster and TAP payments must choose from which program they want to receive payment. That portion of plants enrolled under part 1477 of this chapter that did not receive direct benefits are eligible for TAP. The first 35 to 40 percent uninsured mortality for which part 1477 of this chapter benefits are not provided is defined as not receiving direct payment and may be eligible for TAP. If the costs are to replace lost trees, or nursery plants, the costs shall only be for replacement seedlings or plants of a size and quality determined by CCC to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall only be the costs of the seedlings or nursery plants, tree or plant rehabilitation measures, site preparation measures, and debris handling measures that are normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival; chemicals and nutrients if needed to ensure successful plant survival; labor used to physically plant or rehabilitate such seedlings as based on standard labor rates as determined by the county committee; and nursery plant containers and tree wraps. Eligible costs specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and tree stand improvements, and re-establishing greenhouse structures and windscreens.

(b) Eligible costs shall not include costs incurred for replanting species of seedlings or nursery plants differing

significantly from the species of the seedlings, trees, or nursery plants constituting the qualifying loss except as approved by CCC. If such substitution is approved, eligible costs shall be the lesser of:

(1) The actual eligible costs incurred; or

(2) The estimated eligible costs which otherwise would have been incurred.

(c) Eligible costs shall only include costs approved within the limits set by this part including, but not limited to, those limits set forth in paragraph (a) of this section. Eligible costs include costs incurred before an application for payment is submitted to CCC. Eligible costs shall only include those costs for which the eligible owner has submitted documentation determined by CCC to adequately document such costs.

(d) The amount of assistance which shall be paid by CCC, shall not exceed the lesser of 65 percent of the eligible costs actually incurred by an eligible applicant from replanting the qualifying loss, or 65 percent of the estimated average cost to replant or rehabilitate the qualifying loss, as established by CCC.

(e) Payments made shall be at the minimum level needed to re-establish the individual stand, as determined by the State committee or, if redelegated, by the county committee.

[58 FR 9111, Feb. 19, 1993, as amended at 60 FR 52616, Oct. 10, 1995]

§ 1478.7 Payment.

(a) Applications for payment shall be filed by the eligible owner with the local FSA office and shall contain an estimate by the applicant of the number of seedlings or trees which constitute the qualifying loss and the amount of the acreage of the individual stands with respect to which the loss was suffered.

(b)(1) The county committee or a designee may conduct field reviews to determine the actual qualifying loss and the acreage of individual stands with respect to which the loss was suffered. The county committee and, if designated by the county committee, the county executive director, are authorized, subject to the provisions of this part, to approve or disapprove all applications, subject to the limitations and

conditions of this part, provided the applicant is not a county committee member or an FSA employee.

(2) The State committee, or a designee, is authorized to approve or disapprove applications of the county committee members and all FSA employees except an application which may be submitted by the State Executive Director, or by a State Committee member.

(3) Deputy Administrator, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(c) Payments to each eligible owner may be reduced on a pro rate basis in the event claims for assistance under this part and part 1477 of this chapter exceed appropriated amounts. Such payment reductions shall be applied after the imposition of the \$25,000 per person payment limitation.

[57 FR 10968, Mar. 31, 1992, as amended at 60 FR 52617, Oct. 10, 1995]

§ 1478.8 Obligations of an eligible owner.

(a) Eligible owners must submit a request for assistance on a form approved by CCC and must also submit all documentation requested by the appropriate official which is necessary to make determinations specified in this part.

(b) Eligible owners must:

(1) Comply with all terms and conditions of this part;

(2) Execute all required documents;

(3) Comply with all applicable noxious weed laws; and

(4) Maintain the practice for either 5 years after installation, unless CCC determines that a shorter period is necessary, or 10 years if the trees established on acreage received previous Federal cost-share assistance for tree establishment. Nursery inventory has no practice maintenance requirement.

(c) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, or other condition for payment imposed by the county or State FSA committee or the Deputy Administrator such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under part 1403 of this chapter and computed from the date of disbursement by CCC of the payment to the date of the refund.

(d) Eligible owners who have been paid but choose not to implement their practices by the final practice expiration date shall refund their payments with interest. Interest on these refunds shall be calculated beginning on the date the payment was disbursed. Such refund amounts may be reduced by CCC, at CCC's discretion, when only part of the required replanting practice is not implemented.

(e) Eligible owners must allow representatives of CCC to visit the site for the purposes of quantifying mortality and certifying practice completion.

[57 FR 10968, Mar. 31, 1992, as amended at 58 FR 9111, Feb. 19, 1993; 58 FR 51762, Oct. 5, 1993; 60 FR 52617, Oct. 10, 1995]

§ 1478.9 Payment limitations.

(a) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of orchard trees planted for an annual crop of fruit, nuts, syrup, or other related commercial products shall not exceed \$25,000 for